

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. Case No. 23-10831 (MFW)
LORDSTOWN MOTORS CORP., .
et al., . Joint Administration Requested
. Courtroom No. 4
. 824 Market Street
. Wilmington, Delaware 19801
Debtors. .
. Wednesday, June 28, 2023
. 3:00 p.m.

TRANSCRIPT OF FIRST DAY HEARING
BEFORE THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

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1 (Proceedings commenced at 3:02 p.m.)

2 THE COURT: Good afternoon. This is Judge Walrath.

3 We are here in the Lordstown Motors Corp., case. I
4 will turn it over to counsel for the debtor to get us started.

5 MR. GROSS: May it please the Court; good afternoon,
6 Judge Walrath. This is Kevin Gross of Richards, Layton &
7 Finger, proposed counsel for the Chapter 11 debtors in these
8 cases.

9 First and foremost, my colleagues and I wish to
10 thank Your Honor, Your Honor's staff, and even the Clerk's
11 Office for scheduling this time for us to present these
12 motions. We are asking much of the Court in a very short time
13 and we are sincerely grateful to Your Honor.

14 My colleagues and I believe, from Richards, Layton &
15 Finger, Mr. DeFranceschi, Ms. Steele, and Mr. Madron. We are
16 also here today, through Zoom, with our friends and proposed
17 counsel to debtors' lawyers from White & Case. The Court will
18 be hearing today and in the future from people who the Court
19 knows well from other matters that have been before Your
20 Honor, and these lawyers include Mr. Thomas Lauria, Jason
21 Zakia, Mr. David Turetsky, Mr. Fan He, and others. These
22 folks have worked tirelessly to prepare for today's hearing.

23 Just to take a minute to humanize the case, there is
24 one other person from White & Case working on this matter and
25 that is Livy Mezei who was an intern with the Court several

1 years ago. She is involved in this matter as well. Each White
2 & Case lawyer who will be presenting motions today has been
3 admitted *pro hac vice* in these cases.

4 And I do have, largely, good news on the motions for
5 which we seek relief this afternoon. Subject, of course, to
6 the Court's decision, we have resolved all of the items with
7 the Office of the United States Trustee. All of the motions
8 with the exception of one are consensual and uncontested at
9 this time. In part, that is the result of efforts of Mr.
10 Benjamin Hackman of the Office of the United States Trustee
11 with whom we have worked over the past few days and we want to
12 thank Mr. Hackman for his help and his work.

13 Your Honor, I have no desire to slow down the
14 proceedings here. So, if it please the Court I would like to
15 turn over the virtual podium to Mr. Thomas Lauria who will
16 provide the Court with some opening remarks about the case.
17 After that we would propose to proceed through the agenda
18 which should be in Your Honor's hearing binder.

19 With that I think Your Honor, Judge Walrath.

20 THE COURT: Thank you, Mr. Gross. Good to see you
21 again.

22 MR. GROSS: Nice to see you.

23 THE COURT: Go ahead, Mr. Lauria.

24 (No verbal response)

25 THE COURT: You're on mute.

1 MR. GROSS: You're on mute, Mr. Lauria.

2 MR. LAURIA: Sorry about that. One of the rare
3 times that people won't be able to hear me.

4 Good afternoon, Your Honor. I'm going to try this
5 again, Thomas Lauria with White & Case. We represent the
6 debtors in these Chapter 11 cases.

7 There are three debtors, Lordstown Motors
8 Corporation, Lordstown EV Corporation, and Lordstown EV Sales
9 LLC. Lordstown Motors Corporation is the parent, it is a
10 holding company. Lordstown EV Corporation is the operating
11 company. Lordstown EV Sales was set up to conduct sales on
12 the company's behalf as vehicles would be manufactured.

13 Let me note right off the top that we are joined
14 today, virtually, by Daniel Ninivaggi who is the executive
15 chairman of Lordstown Motors Corporation; Edward T. Hightower
16 who is its CEO and president; Adam Kroll, the executive vice
17 president and CFO, and also your first day witness on the
18 declaration that was filed at Docket 15; and Melissa Leonard
19 who is executive vice president, general counsel, and
20 secretary also of Lordstown Motors Corporation.

21 Also with me, from White & Case, are my partners
22 Jason Zakia, David Turetsky, and Roberto Kampfner. We have
23 three of our colleagues, including Livy Mezei, who will be
24 presenting today. Also presenting will be Peter Strom and Fan
25 He.

1 So, with that let me give a brief background of the
2 case here and the high-level issues and matters that I believe
3 will be before the Court as we work our way through toward a
4 resolution.

5 The entity that is today, Lordstown Motors
6 Corporation, was formed in 2018. Its name at that time was
7 DiamondPeak. It was a SPAC sponsor. In March of 2019 it
8 conducted an IPO and raised \$250 million. It subsequently
9 raised an additional \$37 million.

10 In November of 2019, DiamondPeak acquired -- sorry,
11 sorry, the company now known as Lordstown EV Corporation, but
12 at the time was known as Lordstown Motors Corporation,
13 acquired the General Motors manufacturing facility in
14 Lordstown, Ohio. This is one of the largest auto
15 manufacturing facilities in the United States and had been
16 largely idled by GM a number of years earlier.

17 LMC was engaged in the business of designing and
18 manufacturing electronic vehicles, in particular it had
19 designed the endurance which is a full-sized pickup truck and
20 it is perhaps unique because of its Hub Motor technology
21 pursuant to which there is an engine driving each of the four
22 wheels; something that would be important for a pickup truck
23 in offroad business.

24 In March of 2020 DiamondPeak acquired Lordstown
25 Motors Corporation and combined it with a subsidiary and

1 renamed the entity Lordstown EV. DiamondPeak then changed its
2 name to Lordstown Motors Corporation.

3 In September of 2021 Lordstown Motor Corporation
4 entered into an agreement in principal with Foxconn, one of
5 the world's largest manufacturers; in particular, specializing
6 in the electronics area. And this was because of Lordstown's
7 need for capital and other support to achieve its vision of
8 being able to manufacture in an efficient fashion its
9 vehicles.

10 The AIP envisioned a partnership between Lordstown
11 and Foxconn that would be effectuated through three
12 agreements: an asset purchase agreement, a joint venture
13 agreement, and a contract manufacturing agreement.

14 The asset purchase agreement covered Lordstown's
15 manufacturing facility; arguably, by far, its most valuable
16 asset. The agreement to sell the plant was contingent on
17 entering into a joint venture agreement with Foxconn and a
18 contract management agreement pursuant -- a manufacturing
19 agreement pursuant to which Lordstown would have Foxconn
20 manufacturing vehicles at the facility after it sold it.

21 The plant was, in fact, sold to Foxconn in the
22 spring of 2022. Unfortunately, little has happened since
23 then. Of note, Foxconn convinced Lordstown that it should
24 terminate the joint venture agreement and instead pursue the
25 future through an investment agreement that committed Foxconn

1 to invest up to another \$170 million in the business; however,
2 after the initial \$22 million investment that was made shortly
3 after the investment agreement was entered into no further
4 investment has been made by Foxconn. And, in fact, very
5 little has been done by Foxconn since then, which really
6 brings us to the present.

7 Lordstown has been operating at a substantial cash
8 loss since its inception and was doing so with the expectation
9 that its partnership with Foxconn would continue to provide
10 the financing and technology needed to get to the end of the
11 road, that is to get to a position where the company could
12 manufacture and sell electric vehicles. That didn't happen.

13 The board, acting as a fiduciary here, and really in
14 a quite unique fashion compared to many of the debtors we see,
15 realized that in order to maximize value for its shareholders
16 and other stakeholders' immediate action was required. We
17 needed to develop an efficient path to sell the assets and to
18 liquidate the claims against the estate so that the proceeds
19 could be distributed pursuant to the waterfall contemplated by
20 the bankruptcy code.

21 The concern was that if the company continued to
22 operate at its current level for any period of time going
23 forward the only consequence was going to be that the pot
24 available for distribution was going to shrink in value. So,
25 we have a situation where the board here, I think, was

1 uniquely responsible and although it was a bitter pill to
2 accept that the business didn't have a future in its current
3 ownership structure, the board has made the decision to pursue
4 a liquidation of the company through a Chapter 11 proceeding.

5 Importantly, the company is involved in a number of
6 litigation, which I will review in just a moment, that were
7 costing an enormous amount of money for the company to defend
8 and, obviously, as a consequence of the commencement of these
9 cases the automatic stay has brought that to an end, at least,
10 for now so that the company's resources can be concentrated,
11 and preserved, and used for ultimate distribution to those
12 holding claims when they become allowed claims.

13 Your Honor, I think that its probably easiest to
14 walk the Court through this by thinking of the different
15 categories of major issues that we're going to face. I
16 believe that there really are six.

17 Number one, the debtor is the primary defendant in a
18 lawsuit currently pending in the U.S. District Court in the
19 Central District of California. That suit was brought by
20 Karma Automotive LLC. I believe we will be hearing a bit more
21 about that lawsuit later. Karma is the entity that was
22 formally known as Fisker Automotive which, itself, went
23 through Chapter 11 a number of years ago and is also engaged
24 in the business of developing and manufacturing electric
25 vehicles.

1 The gist of the action is that Karma believes that a
2 number of employees who left Karma and came over to Lordstown
3 took with them trade secrets and confidential information, and
4 that that information is now being utilized wrongly by the
5 debtors. Damages in excess of \$1 billion are sought in that
6 action.

7 The second family of issues that we are going to
8 deal with here are the stockholder litigation claims that have
9 been asserted in Delaware Chancery Court. This is a
10 consolidated action against the D's and O's accusing them of
11 having made false statements that caused the SPAC investors to
12 not take action at a time when they could have. This action
13 is against board members.

14 The debtor is not a party to the lawsuit and it
15 involves one current board member and former board members;
16 all of them are covered by the company's indemnification
17 obligations. So, the company has been funding the cost of the
18 defense of this litigation and would ultimately be on the hook
19 if judgement were to be obtained.

20 The third family of issues here is another group of
21 securities litigations which we believe completely overlaps
22 with the Delaware Chancery Court actions. It's the LMC
23 securities litigation that is pending in the Northern District
24 of Ohio and involves six consolidated class actions. There,
25 the debtor, Lordstown Motor Corporation, is a defendant along

1 with Lordstown EV. Seven board members are also defendants;
2 two are former directors and five are current directors.

3 As with the first family of securities lawsuits all
4 of the defendants are indemnified by the company. Their
5 defense is being provided by the company and the liquidation
6 of those claims will ultimately be a liability against the
7 company.

8 Importantly, Your Honor, one of the things we're
9 going to have to sort through here is neither of the classes
10 have been certified; however, given the potential size of
11 these classes it is clear that they could involve millions and
12 millions of dollars of damage liability for the debtors.

13 Category four, there are a number of derivative
14 actions that have been brought by shareholders against the
15 company. As the Court is aware, those actions upon the
16 commencement of the case become assets of the estate. And we
17 will do what we can and need to do to drive those actions to a
18 resolution that is beneficial to the estate.

19 Fifth category, there is an ongoing SEC
20 investigation and potential civil claims may come out of this.
21 At this point there have been confidential settlement
22 negotiations, but no settlement with the SEC. It is unclear
23 if that will result or lead to a negotiated resolution or,
24 otherwise, be litigated.

25 The final category, category six, is the family of

1 disputes that now exist between the debtors and Foxconn. I am
2 sure the Court has seen the adversary proceeding that was
3 commenced shortly after the filing of the petition. This is
4 not the *sine qua non* of the case, but it is the reason that
5 Foxconn had to file Chapter 11. Without the support
6 negotiated for from Foxconn, both financial and otherwise, the
7 debtor is unable to proceed with its business. We believe
8 that there are significant claims against Foxconn and we think
9 that those claims are going to be best resolved here in the
10 Bankruptcy Court.

11 So, Your Honor, I am happy to address any questions
12 the Court may have. After doing so I am going to turn the
13 podium over to my partner, David Turetsky.

14 THE COURT: Well, I will save my questions for
15 later. So, let me hear the first days that we think we can
16 get through.

17 MR. LAURIA: Great. Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. LAURIA: Now I will go back on mute.

20 THE COURT: All right. And your colleague is still
21 on mute.

22 MS. STEELE: Your Honor, Amanda Steele, Richards,
23 Layton & Finger, on behalf of the debtors. I think that the
24 host needs to unmute the project pickup room.

25 THE COURT: All right. Ms. Neal. Do we need to

1 share the screen, is that what --

2 MS. STEELE: No. They said they were locked by the
3 host, I believe.

4 (Pause)

5 THE COURT: Well, we didn't mute them because we
6 can't unmute them.

7 MR. TURETSKY: Can you hear me now?

8 THE COURT: Yes.

9 MS. STEELE: Thank you, Your Honor.

10 MR. TURETSKY: Excellent. Good afternoon, Your
11 Honor. It's wonderful to see you again. It's David Turetsky
12 of White & Case on behalf of the debtors.

13 I would like to echo the sentiments of Mr. Gross,
14 Mr. Lauria; thank you for making time for us this afternoon.
15 And thank you to Mr. Hackman from the Office of the United
16 States Trustee.

17 I believe we are all resolved on any issues that the
18 U.S. Trustee raised. I think we were able to incorporate most
19 if not all of the Trustees comments in the pleadings that were
20 filed with the Court. To the extent that there are any
21 changes that do need to be made we will note them for Your
22 Honor as we go forward.

23 As you can appreciate, first day relief is always
24 important, always critical. We believe that the first day
25 relief that we are seeking here today is both customary and

1 falls within that category.

2 Before getting into the first day motions, I would
3 just like to take care of a couple of housekeeping matters.
4 First, Your Honor will understand that many of our first day
5 pleadings seek both interim relief and to schedule a final
6 hearing on the motions. I believe that we have been in
7 contact through Richards, Layton with Your Honor's Chambers
8 and the date that we have heard is July 27th, 2023 at 9 a.m.
9 To the extent that that is accurate that does work for the
10 debtors. I wanted to clarify and get certainty on that.

11 THE COURT: I believe it was scheduled for 9:30 a.m.

12 MR. TURETSKY: Correct.

13 THE COURT: Okay.

14 MR. TURETSKY: If I misspoke, I apologize.

15 THE COURT: Yes.

16 MR. TURETSKY: Second, Your Honor, I would like to
17 start by offering the first day declaration as our evidentiary
18 support for the first day relief that we are seeking today.
19 As noted previously, with us here today is Adam Kroll who is
20 the debtors' chief financial officer. Mr. Kroll's declaration
21 has been filed with the Court at Docket No. 15. It is being
22 offered in support of the debtors' first day motions. As
23 noted, Mr. Kroll is available on Zoom and available to be
24 cross-examined if necessary. And at this time I would like to
25 move Mr. Kroll's declaration into evidence.

1 THE COURT: All right. Mr. Kroll, could you briefly
2 turn on your video so that I can assure that you're here.
3 There is quite a number of people on the Zoom.

4 (Pause)

5 THE COURT: Maybe he's not on our Zoom then.

6 MR. TURETSKY: I was assured that he was, Your
7 Honor.

8 THE COURT: All right. Before he gets on, I see Mr.
9 Murphy has a hand up and maybe we can hear from him first.

10 MR. MURPHY: Thank you, Your Honor. Matt Murphy of
11 Paul Hastings on behalf of certain Foxconn entities. I am
12 joined today by Mr. Michael Whalen from the Paul Hastings
13 Firm, as well as Rob Dehney and Matt Harvey from Morris
14 Nichols.

15 Your Honor, I certainly don't want to interrupt Mr.
16 Turetsky's flow here. I just wanted to say that as long as the
17 declaration is being admitted into evidence solely for
18 purposes of supporting the relief requested in the first day
19 pleadings on an interim basis no issue.

20 I do want to point out that I take issue with the
21 declaration to the extent its being introduced as evidence
22 justifying this filing and supporting the allegations against
23 Foxconn, which I would appreciate a chance to comment at the
24 end.

25 Thank you.

1 THE COURT: All right. Mr. Turetsky, you are
2 agreeable that it's only being offered in support of the
3 relief requested today.

4 MR. TURETSKY: That is agreeable to the debtors,
5 Your Honor.

6 THE COURT: All right. Did we find Mr. Kroll?

7 (No verbal response)

8 THE COURT: Ms. Neal, is he in the -- perhaps is Mr.
9 Kroll misidentified as Ms. Leonard?

10 MR. KROLL: Yes, I'm sorry. She forwarded me the
11 invite to make sure that I got on the main line. I'm sorry,
12 Your Honor. Yes, it's Adam Kroll.

13 THE COURT: All right. And everything you stated in
14 the declaration, to the extent it is being offered to support
15 the relief requested today, is true and accurate and would be
16 your testimony, if you testified today?

17 MR. KROLL: Yes, Your Honor.

18 THE COURT: All right, thank you.

19 Does anybody else object to the admission of Mr.
20 Kroll's declaration?

21 (No verbal response)

22 THE COURT: All right, it will be admitted, again,
23 for the record, to support the relief requested today.

24 (Declaration of Adam Kroll received in evidence)

25 MR. TURETSKY: Thank you, Your Honor. May I

1 proceed?

2 THE COURT: You may.

3 MR. TURETSKY: Thank you. The first of our first
4 day motions is a motion seeking joint administration of the
5 debtors' Chapter 11 case. The motion is filed at Docket
6 Number 2, it's Agenda Number 5, and the relief we are seeking
7 is procedural and for administrative convenience. It's a very
8 standard motion and we incorporated comments from the U.S.
9 Trustee prior to filing, so I do not believe that there are
10 any issues there.

11 Unless Your Honor has any questions, I think the
12 motion speaks for itself and we'd ask for entry of the order
13 approving it.

14 THE COURT: Mr. Hackman, do you want to make your
15 statement now or wait until later?

16 MR. HACKMAN: Yes, good afternoon, Your Honor. May
17 it please the Court, this is Ben Hackman for the U.S. Trustee.
18 Can Your Honor hear me okay?

19 THE COURT: I can.

20 MR. HACKMAN: Thank you, Your Honor. I rise to
21 confirm that our informal comments about the first day matters
22 have been resolved and we have no objection to the orders that
23 are going to be presented to Your Honor today.

24 Thank you, Your Honor.

25 THE COURT: Thank you. All right, I will admit --

1 excuse me, I will grant the joint administration order and --

2 MR. TURETSKY: Thank you, Your Honor.

3 THE COURT: -- you may proceed.

4 MR. TURETSKY: The next -- thank you. The next item
5 on the agenda at Docket Number 4 is the application to retain
6 KCC as claims agent. The debtors seek authority to employ KCC
7 as claims and noticing agent pursuant to Section 156(c) of the
8 U.S. Code, and to assume full responsibility for the
9 distribution of notices, the maintenance and processing and
10 adopting proofs of claim filed in the Chapter 11 cases.

11 Your Honor, we're always mindful of the Delaware
12 protocol with respect to claims agents and we got quotes not
13 only from three different firms, but actually four. We chose
14 to retain KCC, subject to Your Honor's approval, due to their
15 proposal and their status in the industry and their
16 experience.

17 And, again, unless Your Honor has any questions,
18 we'd ask that the Court enter the order approving KCC's
19 retention.

20 THE COURT: All right. Anybody else wish to be
21 heard on this motion?

22 (No verbal response)

23 THE COURT: I hear none. I will enter the order.

24 MR. TURETSKY: Thank you, Your Honor.

25 So, Your Honor, the next motion, which we refer to

1 as the global stay motion, which is filed at Docket Number 5,
2 I believe is the only contested motion that we have at this
3 hearing today, but we'll find that out as we go forward,
4 obviously, but it's a motion for an order confirming the
5 worldwide application and enforceability of the automatic
6 stay, and the *ipso facto* and certain other key protections
7 given to debtors under the Bankruptcy Code.

8 We're also seeking approval of a notice attached as
9 Exhibit 1 to the order to provide non-U.S. creditors, as well
10 as authority to translate the order and the notice.

11 Your Honor, although the debtors' operations are
12 based in the United States, they receive product from and have
13 other dealings with certain vendors located outside of the
14 U.S. For example, the debtors utilize certain tooling assets
15 applied by non-U.S. entities located in Canada, China, France,
16 Mexico, Slovakia, the United Kingdom, and the Czech Republic.
17 And, in addition, the debtors' licensed intellectual property
18 related to the motor, the hub motor that Mr. Lauria spoke
19 about earlier, from a Slovenia-based company that has limited
20 or relevant ties to the United States.

21 These entities may be unaware of the import of the
22 debtors' Chapter 11 cases and the protections that are
23 afforded by the Bankruptcy Code, and those protections are
24 applicable to the debtors' property wherever it is located,
25 even outside the United States. The relief we've requested

1 here is intended to better inform those creditors and to
2 assist the debtors in maximizing the value of the estates.

3 Importantly, the debtors do not seek to expand or
4 enlarge the rights afforded to them under the Bankruptcy Code.
5 We seek really to affirm those rights, and to assist non-U.S.
6 creditors and parties in interest to better understand them.

7 Your Honor, we did receive a late-breaking objection
8 to this motion shortly before the hearing by Karma Automotive,
9 which is an entity that has brought suit against the debtors
10 in the Central District of California, and it's brought suit
11 against the debtors and certain former and current employees
12 and executives.

13 I was a little surprised to see the objection. I
14 had spoken with counsel to Karma earlier and it had not
15 arisen, but that's where we are. In any event, we think that
16 the objection is without merit and should be overruled.

17 First, while purporting to object to the motion and
18 the order, the objection does not actually target anything
19 that is in the motion or the order (indiscernible) because the
20 order merely restates the provisions of the automatic stay and
21 other provisions of the Bankruptcy Code. Those provisions are
22 the law; it's hard to take exception to the law. Instead, the
23 objection appears to take issue with the suggestion of
24 bankruptcy that was filed in the Central District of
25 California. That suggestion is not before Your Honor today.

1 Moreover, the context in which Karma has objected is
2 that the Central District of California determined yesterday
3 to stay depositions and discovery, including of the debtors'
4 chief financial officer, relating to claims against debtors
5 and individual defendants alike. The court further indicated,
6 as I understand it, that it would accept briefing on the
7 matter and invited Karma to file papers. Karma is perfectly
8 free to do so; they're perfectly free to bring papers before
9 Your Honor to seek authority to proceed, this motion, this
10 order does not impact their ability to do so, it doesn't
11 prejudice them at all. And in fact the order specifically
12 says at paragraph 3, "This order shall not affect the
13 substantive rights of any party."

14 Again, at paragraph 10, the order says, "This order
15 is declarative and is intended to be coterminous with Sections
16 362, 365, 525, 541, 1107, and 1108 of the Bankruptcy Code.
17 Nothing in this order shall abridge, enlarge, or otherwise
18 affect the rights of any party or the availability of any
19 exception as contained in the Bankruptcy Code."

20 Again, that's the law. It's hard to object to the
21 law.

22 So the order that we're asking Your Honor to enter
23 merely provides for what the Bankruptcy Code provides and it
24 doesn't abridge the rights of any party. And we don't think
25 it's necessary to add language, which is what Karma is asking

1 us to do, because that language isn't in the Bankruptcy Code.

2 In addition, Karma's objection asks the Court to
3 direct the debtors to amend their suggestion of bankruptcy.
4 That request really underscores that the subject of Karma's
5 objection is the suggestion of bankruptcy itself and not the
6 order and not the notice that the debtors propose. It's
7 procedurally improper, the objection is not a motion and the
8 suggestion of bankruptcy is not before this Court.

9 And, lastly, I have every expectation that Karma
10 will be before Your Honor and file papers with respect to the
11 scope of the automatic stay; they're perfectly within their
12 rights to do so. There's nothing in the relief that the
13 debtors are seeking that impairs Karma's ability to do so.

14 I'm also mindful that while Your Honor has
15 admonished me at times in the past not to recite other first
16 day orders, I would note this is a first day order that Your
17 Honor (indiscernible) --

18 THE COURT: You know not to do that.

19 (Laughter)

20 MR. TURETSKY: I know, I know.

21 THE COURT: For example, how often did somebody
22 appear at a first day and object to my entering --

23 MR. TURETSKY: That is perfectly --

24 THE COURT: -- a form of order --

25 MR. TURETSKY: -- they're here and they're

1 objecting.

2 THE COURT: All right.

3 MR. TURETSKY: They're here and they're objecting.

4 I understand, Your Honor.

5 So we would, therefore, ask that the Court overrule
6 the objection and enter the order.

7 THE COURT: Let me ask a question of you before I
8 hear from Karma. Who directed counsel in California to file
9 the suggestion of bankruptcy?

10 MR. TURETSKY: I believe that was the debtors, it
11 was White & Case, Your Honor.

12 THE COURT: Okay. Thank you.

13 Does Counsel for Karma wish to be heard?

14 MR. SOWKA: Yes, Your Honor. This is James Sowka on
15 behalf of Karma Automotive. I apologize, my Zoom is
16 mislabeled Jesse Coleman, who is my partner also appearing
17 with me today, as well as our co-counsel Mark Olivere of the
18 Chipman Brown law firm in Wilmington, Delaware.

19 Your Honor, some background is necessary to provide
20 some context with respect to Karma's limited objection. As
21 Mr. Lauria indicated, Karma is in fact the largest creditor of
22 the debtors' estate, holding a damages claim in excess of \$900
23 million based on the pending litigation in the Central
24 District of California.

25 Despite that, for some reason Lordstown saw fit to

1 omit Karma from the 30 largest list of creditors in the case
2 and we're not included on there, nor was the liability
3 disclosed otherwise in the petition filed by Lordstown in this
4 case.

5 With respect to the pending claims, Your Honor,
6 Lordstown is seeking damages, including injunctive relief,
7 against the debtor, as well as certain individual defendants,
8 including current and former officers, directors, and
9 employees of Lordstown with respect to the willful and
10 malicious misappropriation of trade secrets, including but not
11 limited to source code from Karma's vehicles that has been
12 integrated into Lordstown's vehicles, the Endurance electric
13 pickup truck.

14 Your Honor, the litigation in the Central District
15 was filed in 2020 and has been going on for almost three
16 years. There has been extensive discovery undertaken in the
17 case and the matter was initially set for trial in April, and
18 that was postponed due to the need for Lordstown to substitute
19 one of its expert witnesses due to a health issue. As such,
20 the District Court reset the trial for September 5th. Other
21 than the substitution of the expert report and some related
22 issues, the matter is ready to proceed to trial.

23 As Your Honor is aware, we attached -- the debtors
24 in this case filed a suggestion of bankruptcy, asserting that
25 the automatic stay protects the third parties, as well as

1 Karma, from the claims proceeding in the case. Based in part
2 on their representations, the District Court judge has stayed
3 the matter for the time being, Your Honor.

4 And it appears now that the debtor has filed a sales
5 procedures motion and intends to attempt to sell its assets,
6 including, apparently, the misappropriated intellectual
7 property, prior to the adjudication from his rights and claims
8 with respect to same.

9 Karma will be filing an objection to the sales
10 procedures motion, Your Honor, and, unsurprisingly, Karma also
11 intends to promptly file a motion for relief from the
12 automatic stay to proceed with the September trial.

13 Your Honor, the concerns with respect to the pending
14 motion are obvious. The debtor seems to be saying one thing
15 in court and is asking for broad, vague language entered in an
16 order; meanwhile, it's filing suggestions of bankruptcy in
17 other jurisdictions saying other things on this. And we
18 attempt -- we suspect the debtor is going to attempt to use
19 the order to cause further delays with respect to the
20 litigation in the Central District of California. As such, we
21 have requested a very minor amendment to the proposed order
22 simply specifying what Your Honor has already held with
23 respect to the application of the automatic stay, is that the
24 stay doesn't apply to third parties.

25 And, specifically, Your Honor, in the Uni-Marts

1 case, Your Honor addressed the issue and the authorities cited
2 by Lordstown, the A.H. Robins case at 788 F.2d 994 (4th Cir.
3 1986). And Your Honor, in addressing that opinion, found that
4 it didn't automatically protect third parties in extent of the
5 automatic stay; instead, it was incumbent upon debtors and
6 third parties to move before the Court to have the stay
7 extended.

8 So, based on Your Honor's findings and the
9 misrepresentations that the debtor has made to the Central
10 District of California, we have requested that Your Honor
11 order that the suggestion of stay be modified to be consistent
12 with the relief requested by the debtors in this motion before
13 this Court and, further, that the order be revised to specify
14 that the stay does not on its face apply to third parties.

15 If Your Honor has any other questions, I'm happy to
16 answer them.

17 THE COURT: I have no questions.

18 Does the debtor wish to respond?

19 MR. TURETSKY: Yes, Your Honor. Again, I'm going to
20 go back to the context in which this objection was made and
21 the context, frankly, of the relief that we're seeking.

22 The relief that we're seeking is relief to clarify
23 for non-U.S. creditors the provisions of the automatic stay
24 and that they have global reach. The provisions of the stay
25 are reproduced in the order, we haven't changed the wording.

1 Your Honor, I fail to see how Karma's concerns about
2 a suggestion of bankruptcy and proceedings that relate to a
3 litigation that is not in front of Your Honor at this time
4 relate to the relief that we are seeking in connection with
5 this motion. We have not cited A.H. Robins in our motion, but
6 we've cited the provisions of the Bankruptcy Code.

7 And so from our perspective, Your Honor, we fully
8 expect, again, that Karma is going to come to this Court, it's
9 going to seek relief from the stay, it's not at all prejudiced
10 or precluded from doing so, we can put that in the order -- we
11 think it's already in the order, frankly. The order says it
12 does not abridge the rights of any party. It says the order
13 is intended to be coterminous with Section 362. It doesn't
14 add language, it doesn't say non-debtors.

15 What Karma is asking Your Honor to do is to put in a
16 provision that is not in the Bankruptcy Code that says the
17 stay -- a blanket statement, the stay does not apply to non-
18 debtors. That is more apt to cause confusion because we can
19 envision a scenario in which -- and I see Your Honor
20 grimacing, but we can envision a scenario in which Karma or
21 another party subpoenas the CFO of the company in order to
22 pursue a claim against the debtor. There's one reading from a
23 very broad statement that says it does not apply to non-
24 debtors where that would be permissible. We don't think it
25 is, Your Honor. We think that these disputes should be

1 resolved in front of Your Honor or in front of the Court based
2 upon the language of the Code, not language that's not in the
3 Code.

4 THE COURT: So what are you saying, you think that
5 somebody cannot subpoena your CEO to appear in another forum,
6 is that what you just said?

7 MR. TURETSKY: I don't think they can pursue
8 discovery against our CFO for the purpose of pursuing a claim
9 against the debtor, I think that's squarely within the
10 automatic stay.

11 THE COURT: Well, excuse me, but 2004 suggests
12 otherwise. Any creditor has the right to discovery, if you
13 will, under Rule 2004 with respect to their claim --

14 MR. TURETSKY: Outside of the --

15 THE COURT: -- but let me break off. I think the
16 problem here is of the debtors' own making. The debtor is the
17 one who filed a suggestion of bankruptcy that has caused
18 confusion. The suggestion of bankruptcy, as articulated by
19 Karma and you have not disputed this, seems to go far beyond
20 what the automatic stay Section 362 provides, and I think it
21 is incumbent upon the debtor to clarify that.

22 So I agree. I will direct the debtor to file an
23 amended suggestion of bankruptcy or withdraw the original
24 suggestion of bankruptcy and file a proper one. But I'm not
25 sure I agree with the debtor that putting in a statement that

1 the automatic stay does not protect any non-debtor or the
2 property of any non-debtor -- or, if you want to put it in the
3 affirmative, that the automatic stay only applies to the
4 debtor and to property of the debtor, and I think that should
5 be added to the end of the order to make it clear, the limits
6 of the order.

7 MR. TURETSKY: Okay, Your Honor, we'll work with
8 language -- on language and work with Karma to add that
9 language.

10 MR. SOWKA: Thank you, Your Honor.

11 THE COURT: All right. And I'll look for that under
12 certification of counsel after you've reviewed it with
13 Counsel.

14 All right, the next motion?

15 MR. TURETSKY: Thank you, Your Honor. The next
16 motion, which is at Docket Number 6, is the debtors' employee
17 wages and benefits motion.

18 As the debtors enter the Chapter 11 cases, it
19 remains crucial to maintain the goodwill of their 425
20 employees and the purpose of this motion is to minimize the
21 impact of the debtors' Chapter 11 cases on those employees.

22 To do that, the debtors are seeking customary
23 employee wages and benefits relief for the interim period,
24 which is (indiscernible) that relief includes cash payments of
25 \$600,000 in (indiscernible) --

1 THE COURT: Excuse me, you're breaking up now and I
2 don't know why. I don't know where your microphone is.

3 MR. TURETSKY: Can you hear me now?

4 THE COURT: That's better, yes.

5 MR. TURETSKY: Is that better? All right. I will
6 lean into the microphone, Your Honor.

7 THE COURT: Thank you.

8 MR. TURETSKY: And please tell me if you can't hear
9 me.

10 Where was I? The relief includes making cash
11 payments of \$600,000 during the interim period for prepetition
12 employee wages. The \$600,000 is for those unpaid prepetition
13 employee wages during the 180 days preceding the bankruptcy
14 filing and no employee will be paid more than the priority BAP
15 set forth by the Bankruptcy Code.

16 It also includes severance in the number up to the
17 priority cap for one individual employee. It's not subject to
18 503(c), it's not an insider. And, again, that would be up to
19 the cap.

20 As is customary, the debtors are also seeking to pay
21 employee-related obligations to third party service providers
22 such as Paylocity, their payroll processor, and to honor
23 prepetition withholding and payroll tax obligations in the
24 ordinary course.

25 The debtors are also seeking to honor their

1 prepetition 401(k) match obligations and any 401(k)
2 reconciliation safe harbor obligations that may be
3 outstanding, again, up to the priority cap during the interim
4 period, as well as reimbursable expenses and relocation
5 expenses. We're requesting authorization to continue
6 providing paid leave, health and insurance benefits to
7 employees. And we're seeking authorization to continue our
8 prepetition wage and -- wage practices on a post-petition
9 basis, including providing up to four weeks of severance to
10 non-insiders.

11 So the total prepetition amounts sought to be paid
12 during the interim period are approximately \$1.4 million.
13 It's all set forth on a chart on page 3 of the motion. And,
14 again, we're not seeking during the interim period to pay
15 anyone in excess of the priority cap.

16 And, lastly, we would ask that the Court schedule a
17 hearing to consider the relief on a final basis; that, we
18 understand, will be at the second day hearing.

19 We don't believe there's any opposition to the
20 motion, other than perhaps questions that Your Honor may have,
21 and we would ask that Your Honor enter the order approving the
22 relief.

23 THE COURT: My question is with respect to the
24 severance, is that included in the one point approximately
25 five million dollars cap because I didn't see it separately

1 listed.

2 MR. TURETSKY: Let me double check, Your Honor.

3 (Pause)

4 MR. TURETSKY: It is, Your Honor, it is.

5 THE COURT: And where --

6 MR. TURETSKY: Let me -- sorry, it is part -- it's
7 part of the \$600,000. I'm sorry.

8 THE COURT: Okay. And that is for all of the
9 employees that got the WARN Act notice?

10 MR. TURETSKY: No, Your Honor, those employees are
11 continuing to collect pay. It is for a single -- the
12 severance is for a single employee who was terminated
13 prepetition and has a severance agreement. That severance
14 agreement proposes to pay -- you know, has an obligation to
15 pay in excess of the cap, but we are not proposing to pay in
16 excess of the cap, we're proposing to pay up to the cap.

17 THE COURT: All right, it is only for one employee.
18 Okay.

19 MR. TURETSKY: Correct.

20 THE COURT: Well, the second day is scheduled for
21 July 27th. Will there be any layoffs and any severance
22 contemplated being paid between now and then, other than that
23 one employee?

24 MR. TURETSKY: Your Honor, I can't say for sure. I
25 think we would -- you know, to the extent that there are, we

1 would like discretion to continue the severance practice up to
2 four weeks of severance for non-WARN employees. In other
3 words, to the extent that we -- that there are severances that
4 occur that are outside of WARN, that are not subject to WARN
5 notice, we would request authorization to provide up to four
6 weeks of severance in our discretion.

7 THE COURT: So are you saying all of the WARN
8 notices are within the \$600,000 wage number?

9 MR. TURETSKY: Well, the WARN notices -- people are
10 continuing to work, continuing to come to the office. So
11 those who had outstanding prepetition amounts, yes, those are
12 within the \$600,000 number.

13 THE COURT: Okay. And they are not otherwise
14 subject to any severance agreement?

15 MR. TURETSKY: No, Your Honor.

16 THE COURT: Okay. Well, if you want discretion to
17 pay any severance other than the one contract employment --
18 contract provision, I think that has to be included as part of
19 the cap and identified. So I don't know --

20 MR. TURETSKY: Okay.

21 THE COURT: -- how you're going to do that.

22 MR. TURETSKY: So how about if we include language
23 in a revised proposed order that says that we would pay and
24 that no employee during the interim period would get in excess
25 of the cap on account of the severance?

1 THE COURT: Okay, but -- well --

2 MR. TURETSKY: All right, we'll work on --

3 THE COURT: -- well, I don't want to tie the
4 debtors' hands, but I think you need to give me a total cap
5 that would encompass those, and I think you need to perhaps
6 talk to Mr. Kroll or somebody about how that can be fashioned.

7 MR. TURETSKY: We'll do that, Your Honor.

8 THE COURT: Okay. All right. I'll look for that
9 under certification of counsel, then.

10 MR. TURETSKY: Thank you, Your Honor.

11 Your Honor, I'm going to pass the virtual podium to
12 my colleague Fan He.

13 THE COURT: Mr. He?

14 MR. HE: Good afternoon, Your Honor.

15 THE COURT: Good afternoon.

16 MR. HE: Fan He, White & Case, on behalf of the
17 debtors.

18 I'm going to be presenting the next three items on
19 the agenda, starting with the creditor matrix motion, which is
20 Agenda Item 9 and Docket 9, as well. With this motion, Your
21 Honor, the debtor seeks interim orders and final orders
22 authorizing the debtor to waive the requirements to file
23 equity share -- equity holder lists, and provide notice to the
24 equity holders.

25 Your Honor, the lead debtor LMC, is a public health

1 company with approximately 16 million shareholders and to be
2 able to identify each individual shareholder's servicing
3 address and information would be very taxing on the estate and
4 would almost be an impossible task. So we ask Your Honor to
5 waive the requirement.

6 And we have consulted with the U.S. Trustee on this
7 procedure and what we received was a suggestion for
8 alternative methods for serving the equity shareholders, which
9 we have incorporated into the proposed order in paragraph 3.
10 And under this particular alternative method of service, the
11 debtor proposed to publish notice of the commencement of the
12 case on the case website, along with filing a Form 8-K with
13 the SEC within four business days of the petition date, and
14 including the notice of commencement in the debtors' proposed
15 noticing program.

16 Your Honor, I'll pause there to see if you have any
17 questions on this matter.

18 THE COURT: I do. I see that the suggestion of
19 what notice would be provided is adequate for the interim
20 period; namely, the commencement of the case and the filing of
21 first day motions. But I'm concerned that you're, as I
22 understand it, are suggesting that you will not be providing
23 notice of any other motion in this case until the time when a
24 plan is filed and shareholders may be entitled to vote.

25 Why would that be appropriate?

1 MR. HE: Your Honor, we will also be providing
2 notice of the bar date motion if equity holders are going to
3 be entitled to vote on the plan.

4 THE COURT: I understand --

5 MR. HE: And we also --

6 THE COURT: I understand, but there's \$8 million,
7 as I understand it, in trade creditors. There are no secured
8 creditors.

9 So, aren't the 16 million shareholders those who
10 have the most interest in what you may do between now and the
11 filing of a plan or a bar date motion?

12 MR. HE: Well, Your Honor, all the motions will be
13 on the case website and will be publicly available for all the
14 shareholders.

15 THE COURT: I'm not sure -- I don't -- I'm not sure
16 that's appropriate.

17 I will enter the order on an interim basis only,
18 but I think that we need to deal with how shareholders can be
19 represented in this case.

20 MR. HE: Understood, Your Honor. We will discuss
21 this matter with the debtors.

22 THE COURT: Okay.

23 MR. HE: And secondly what we seek in the creditor
24 matrix motion is the redaction of personal identification
25 information for approximately 3500 individual creditors (audio

1 interference) possibly be creditors in the matter and also
2 would have approximately 2,000 potential customers who have
3 paid deposits for (indiscernible) trucks.

4 What we are seeking to do is redact only the home
5 address of these individuals, not the names on the creditor
6 matrix. And we have also talked with the U.S. Trustee on the
7 matter and we received suggestions for service on these
8 individuals so that no other party in interest (audio
9 interference) impacted or adversely affected by the redaction.

10 So the suggestion the U.S. Trustee made, and we
11 adopted, is in the proposed order, paragraph 4. So, to the
12 extent that any parties in interest need to serve the
13 individual customers, we will work in good faith with the
14 party in interest and effectuate service on these parties
15 through our claims and noticing agent.

16 Your Honor, I'll pause there to see if you have any
17 questions.

18 THE COURT: Yeah. Hold on a second.

19 Is that in the form of order?

20 MR. HE: Yes, Your Honor.

21 THE COURT: And what paragraph was it again?

22 MR. HE: Paragraph 4.

23 (Pause)

24 THE COURT: Okay.

25 MR. HE: All right. Thank you, Your Honor.

1 THE COURT: Thank you.

2 MR. HE: So, Your Honor --

3 THE COURT: I had no problem with that provision.

4 MR. HE: All right. Thank you, Your Honor.

5 I will move on to the next item on the agenda then.

6 THE COURT: Okay.

7 MR. HE: The next item on the agenda is the cash
8 management motion. That is Agenda Item 10 and Docket 8.

9 Your Honor, by this motion, the debtor seeks relief
10 to authorize the continued use of debtors' cash management
11 system, bank accounts, and business forms, authority to
12 continue intercompany transactions in the ordinary course, and
13 the waiver of the investment and deposit requirement under
14 Section 345 of the Bankruptcy Code.

15 Your Honor, the debtors' cash management, as you
16 will see in the motion, is very simple. If you would like,
17 Your Honor, I'm happy to walk you through it.

18 THE COURT: Just confirm that there are no
19 nondebtors involved in the cash management.

20 MR. HE: Yes, Your Honor. There are no nondebtors
21 in the cash management system.

22 THE COURT: Okay. That was my only question.

23 MR. HE: Thank you, Your Honor.

24 THE COURT: I will enter that order.

25 MR. HE: Great. Thank you, Your Honor.

1 Moving to the next item on the agenda, we have the
2 critical vendor motion. That is Agenda Item 11 and Docket 9.

3 With this motion, the debtor seeks interim and
4 final orders authorizing the payment of certain categories of
5 vendors, which includes critical vendors, foreign vendors, and
6 also vendors who are entitled to administrative priority under
7 Section 503(b)(9) of the Bankruptcy Code. We're seeking an
8 interim amount of \$1.372 million and the final amount of \$1.96
9 million.

10 Your Honor, with these three categories, I think
11 it's pretty self-explanatory. The critical vendors we
12 absolutely need because the electric vehicles that we produce
13 requires proprietary and specialized tooling, software, and
14 parts that are only available through select, and sometimes
15 foreign, vendors. And also for the foreign vendors, as
16 Mr. Turetsky referenced, there's a whole host of countries
17 that we interact with across the world to provide these parts.

18 For the 503(b)(9) creditors, Your Honor is well
19 aware of the Bankruptcy Code provisions on the priority.

20 So unless Your Honor has any questions, I'd request
21 the Court approve the motion on an interim basis.

22 THE COURT: All right. I think the debtors made a
23 case for entering that order and I will enter the order on an
24 interim basis.

25 MR. HE: Thank you, Your Honor.

1 With that, I will turn the podium over to my
2 colleague Peter Strom.

3 THE COURT: Thank you.

4 MR. STROM: Good afternoon, Your Honor. Peter
5 Strom of White & Case, proposed counsel for the debtors.

6 Before I begin, and with the Court's permission,
7 I'd like to go slightly out of order on today's agenda and go
8 through Items 12 and 14, and then turn it back over to my
9 colleague for 13.

10 THE COURT: Okay.

11 MR. STROM: So the next item on the agenda is Item
12 12, the tax motion, entered at Docket 10.

13 We have not received any formal objections to this
14 motion. Unless the Court has any questions or would like
15 further presentation, which I'm happy to walk through, we
16 respectfully request that the Court enter the proposed interim
17 order granting the requested relief.

18 THE COURT: All right. Anybody wish to be heard on
19 that?

20 (No verbal response)

21 THE COURT: All right. I had no questions on this
22 and I will enter the order.

23 MR. STROM: Thank you very much, Your Honor.

24 The next motion is the insurance motion. That's
25 Agenda Item 14 and that's filed at Docket 12.

1 Again, we have not received any formal objections
2 to this motion and unless the Court has any questions, or
3 would like me to walk through it, which I'm happy to, we'd
4 respectfully request that the Court enter this proposed
5 interim order granting the requested relief.

6 THE COURT: All right. I will enter it on an
7 interim basis.

8 MR. STROM: Thank you very much, Your Honor.

9 MS. MEZEI: Good afternoon, Your Honor. For the
10 record, this is Livy Mezei from White & Case on behalf of the
11 debtors.

12 The next item on the agenda is Item 13, the
13 debtors' utilities motion, filed at Docket 11.

14 The debtors did not receive any formal objections
15 and have incorporated all of the informal comments from the
16 U.S. Trustee prior to filing this motion. Unless the Court
17 has any questions or would like for a presentation, the
18 debtors request entry of the interim order.

19 THE COURT: I had no question about this motion, so
20 I will enter that motion, as well.

21 MS. MEZEI: Thank you, Your Honor.

22 The next item on the agenda is Item 15, the
23 debtors' customer obligations motion, filed at Docket 13.

24 The debtors did not receive any formal objections
25 and have incorporated all of the informal comments from the

1 U.S. Trustee prior to filing this motion. Unless the Court
2 has any further questions or would like further presentation,
3 we respectfully request entry of the interim order.

4 THE COURT: I had no question on this, as well. I
5 will enter the order.

6 MS. MEZEI: Thank you, Your Honor.

7 I will turn the podium to my colleague,
8 Mr. Kampfner.

9 MR. KAMPFNER: Good afternoon, Your Honor. Roberto
10 Kampfner with White & Case, proposed counsel for the debtors.

11 Your Honor, I rise in support of the debtors'
12 motion for entry of an interim and final order establishing
13 notice and hearing procedures for trading in equity securities
14 in the debtors and requested related relief. It's Docket 14
15 and Agenda Item 16. And we're seeking, of course, only
16 interim relief at this point.

17 There've been no objections to the motion. I'm
18 happy to walk the Court through it or answer any questions.

19 THE COURT: To whom does this apply, other than
20 Foxconn?

21 MR. KAMPFNER: So, Your Honor, there are two -- it
22 could potentially apply to BlackRock, which holds, I think,
23 4.9 percent of the common the last time that we checked. We
24 don't know exactly how much they hold today, but it could
25 apply to BlackRock. I don't think it would apply to anybody

1 else.

2 THE COURT: How do you propose, if you're not
3 giving any notice to any shareholders, how do you think
4 they're going to get notice of an order prohibiting them from
5 trading their shares?

6 MR. KAMPFNER: Your Honor, I believe that -- one
7 second. I apologize.

8 (Pause)

9 MR. KAMPFNER: So I believe that under the notice
10 procedure section of the motion, which is on paragraph 13, we
11 would be giving notice to all registered and record holders of
12 Lordstown common and Lordstown preferred through their
13 registered agents. So I believe that this particular motion
14 would be noticed -- the notice of procedures would be noticed
15 to the shareholders. I would assume it'd be through
16 (indiscernible) and typical.

17 THE COURT: But you can't give notice of anything
18 else in the case, in the same manner? Do you see my problem?

19 MR. KAMPFNER: I see the issue, Your Honor, and I
20 think when we go talk to the debtor about notice in general,
21 that's clearly something that we'll take into consideration
22 to, you know, address Your Honor's concerns.

23 But this particular (audio interference) broader
24 notice, so people would -- shareholders would understand the
25 limitations.

1 THE COURT: All right. Well, for the interim, I
2 will approve it, but I will look for evidence to be presented
3 at any final hearing on this motion that, in fact, it is
4 necessary to preserve any NOLs, giving what I understand the
5 debtors' game plan in this case is.

6 MR. KAMPFNER: I understand, Your Honor.

7 THE COURT: Okay.

8 MR. KAMPFNER: Thank you. I'll turn the podium
9 back over to Mr. Turetsky. Thank you for your time.

10 THE COURT: Thank you.

11 MR. TURETSKY: Good afternoon, Your Honor. Dave
12 Turetsky, again, for the debtors.

13 That does take us to the end of the agenda. So,
14 unless Mr. Lauria has any comments, I think we're -- or unless
15 Your Honor wants to speak again, I think from the debtors'
16 perspective, that's all we have today.

17 THE COURT: All right. I think Mr. Murphy wishes
18 to be heard.

19 MR. MURPHY: I do. Thank you, Your Honor.

20 Again for the record, Matt Murphy of Paul Hastings.
21 I just want to make a few quick points, three, with respect to
22 the debtors' current situation, the proposed 363 sale, and
23 the relationship with Foxconn.

24 Having represented debtors, I certainly understand
25 the desire to come into a case and adopt a story. And in this

1 case, this story is, as I read the papers, that somehow it's
2 Foxconn's fault that the debtors are where they are.

3 But I also turn to other aspects of the first day
4 declaration that sort of belie that narrative. If you look at
5 paragraph 21 of Mr. Kroll's declaration, he describes
6 launching Endurance production later than expected at a,
7 what's called a "BOM" -- bill of materials -- I just think of
8 it as build cost -- at significantly -- at a significantly
9 greater than anticipated sale price.

10 And the paragraph goes on. It says:

11 "It became clear that operating and capital
12 expenditures, including total selling, general administrative
13 expenses, engineering, development, and testing costs, and
14 additional production costs would meaningfully exceed
15 projections."

16 He went on to discuss that, in that paragraph, that
17 a material increase of the forecasted cash outflow from
18 operations in 2021, it was higher than projected, and that
19 there was going to be a delay in commercial production, and
20 that the increased costs stressed the debtors' financial
21 condition. In the very next paragraph, Your Honor, the
22 declaration describes that the debtor had to revise their
23 forecast, due to the circumstances described in paragraph 21,
24 and that they had to add a going-concern risk factor and three
25 material weakness factors in June of 2021.

1 In other words, their independent auditors, at that
2 time, called into question their ability to continue as a
3 going-concern for another year. The paragraph went on to
4 describe installation of new management.

5 Mr. Lauria already described the five separate
6 state and federal securities class actions that are ongoing.
7 We've also had a discussion about the ongoing litigation with
8 Karma. So, in other words, on point one, the company had
9 operational issues. It had management issues. It had
10 production issues. It had financial issues and litigation
11 issues before the relationship with Foxconn.

12 Point two, Your Honor, in terms of the rationale
13 for a proposed 363 sale I find interesting. Paragraph 61
14 describes the prepetition process conducted by Jefferies in
15 September of 2021 to, quote, "explore all market
16 alternatives." And, quote, "While the company, its advisors,
17 and potential partners held numerous meetings and in-person
18 evaluations of the Endurance, as of the petition date, the
19 company has not received any actionable indications of
20 interest."

21 There's a footnote to that paragraph that reveals
22 that the company couldn't obtain a loan from the U.S.
23 Department of Energy because it couldn't demonstrate the
24 company's viability.

25 Paragraph 62 goes into great detail about the

1 outlook for the company, making the challenge of this proposed
2 sales process abundantly clear: negative sentiment towards
3 start-up companies, especially in the EV space, no traditional
4 equity sales of size amongst small-cap EV companies in over a
5 year, and that every start-up EV company sustained massive
6 declines in market capitalization.

7 Paragraph 66 of the declaration talks about halting
8 production of the Endurance, which makes sense, given that a
9 total of 65 Endurance vehicles have been produced, as compared
10 to the 31,600 projected in 2022 and 65,000 projected in 2023,
11 as set forth in this (indiscernible) prohibition statement
12 filed October 8th, 2020.

13 As an aside, when I read the bidding procedures
14 motion and the preliminary statement, it seems more like a
15 complaint against my client than a real effort to sell these
16 assets.

17 Number three, the partnership with Foxconn, as
18 alluded to by Mr. Lauria earlier. There was an agreement, in
19 principle -- I call it an "AIP" -- I hope I'm getting that
20 right, but, you know, it --

21 THE COURT: You don't have to answer the adversary.
22 I understand that a lot of the statements are the debtors'
23 position.

24 MR. MURPHY: Yeah. Thank you, Your Honor for that,
25 Your Honor.

1 The agreement was only limited that Foxconn would
2 buy the plan from LMC and enter into a contract-manufacturing
3 agreement to produce the Endurance and, also, I guess, the
4 lease for office space. So, all of that will come out, as you
5 alluded to -- I'm not trying to pre-litigate the issues --
6 but I do want an opportunity to respond to what has been a
7 very public attack against Foxconn, which I think, ultimately,
8 will prove baseless.

9 So my point, Your Honor, is that the bankruptcy
10 filing, the sale process, the attacks against Foxconn, I view,
11 as I sit here today, as an inappropriate effort by the debtors
12 to exert leverage against Foxconn, a litigation tactic in a
13 bankruptcy proceeding in which they are not insolvent.

14 I look forward to setting the record straight. I
15 thank you for your time.

16 THE COURT: Thank you.

17 Mr. Lauria, you need not file a response to the
18 response.

19 MR. LAURIA: Right. Your Honor, I just want to say
20 that in my opening presentation, I really tried very hard not
21 to get into all of the details of the disputes between the
22 debtor and Foxconn, just to note that they existed and that,
23 you know, we believe that Foxconn's conduct has a lot to do
24 with the problems that the debtor currently faces.

25 Obviously, Foxconn disagrees. There'll be a time

1 and a place for that to be, if any, up -- it's not today --
2 and it'll sort itself out as it's supposed to.

3 THE COURT: Have we talked about, or have you
4 gotten any time for -- I understand you filed a motion for bid
5 procedures. Will that be heard on the 27th, as well?

6 MR. TURETSKY: That's what we intend to do, Your
7 Honor.

8 THE COURT: Okay. All right. Thank you.

9 Then, I look forward to many more discussions of
10 what is going to happen in this case.

11 MR. TURETSKY: Always a pleasure, Your Honor.
12 Thank you for making the time for us today.

13 THE COURT: All right. We'll stand adjourned then.

14 MR. TURETSKY: Thank you.

15 (Proceedings concluded at 4:13 p.m.)
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CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling June 28, 2023

William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams June 28, 2023

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